

REMARKS

This Request for Reconsideration is being filed in response to the Advisory Action dated October 30, 2007. The Response filed on October 16, 2007 responding to a final office action issued on August 14, 2007 is incorporated herein. Claims 10-24 were withdrawn previously. Claims 1-9 are now active for examination.

Request for Entry of Previous Amendments to Claims 3 and 4

The Previous Response amended claims 3 and 4 to provide appropriate antecedent basis, which placed the claims in better form for allowance and/or reduced issues for appeal. No new matter is introduced. Entry of the amendments to claims 3 and 4 and an indication thereof are respectfully solicited.

The Rejections Are Overcome

(1) Discussions from the previous Response

The Office Action rejected claims 1-3 and 5 as being anticipated by Banks by asserting that elements 276 and 258 in Fig. 5 to be corresponding to the claimed touch sensitive active region and the graphical representation, respectively, and that it is "clear from fig. 5" that element 276 (the alleged touch sensitive active region) is larger than element 258 (the accused graphical representation). See page 3, third paragraph of the Office Action.

The Previous Response clearly pointed out that contrary to the Examiner's assertion, contrast, Banks does not disclose that each of its display elements includes an active region and a graphical representation having an area smaller than that of the active region, as claimed. Actually, Banks is silent with respect to this feature. Specifically,

while element 258 indeed represents an “acquire” icon, element 276 is NOT a touch sensitive active region, as required by claim 1. Rather, it is a “graphical representation” displayed for indicating a user’s selection of the acquire icon 258 subsequent to the selection (“when acquire icon 258 is selected, processor 106 indicates selection of acquire icon 258 by providing a digital tab 276 which encompasses acquire icon 258”). See col. 13, lns. 36-39 of Banks. In other words, element 276 is only a graphical tab and has nothing to do with a touch sensitive area. Accordingly, Banks fails to teach “a user interface for invoking a function of a diagnostic instrument, the user interface comprising: a first navigational menu including at least one display element, the at least one display element having a touch sensitive active region and a graphical representation of functionality invoked by user selection of the display element, wherein the touch sensitive active region includes more display area than the corresponding graphical representation,” as described in claim 1.

Claims 4 and 6-9 depend from claim 1 and were rejected as being unpatentable over Banks in view of Ross or Cross. The Ross and Crosss reference do not furnish the features of claim 1, from which claims 4 and 6-9 depend, missing from Banks. Therefore, any combinations of Banks with either Ross or Cross, however made, would still be missing these features, and it would not have been obvious to add these features to any contended combinations. Therefore, claims 4 and 6-9 are patentable.

(2) The Advisory Action does not cure the deficiency of the Office Action

In responding to the traversing arguments presented in the Previous Response, the Advisory Action states:

The Examiner is well aware that the box drawn by Banks, 266, in Fig. 4, is a graphical element. The Examiner’s aim was to show that this box is seen as the

outer border of the selection area. Should the user of the Banks' invention select another display area outside the border then a different function will be implemented.

See page 2 of the Advisory Action

This statement misdescribes the operation of Banks' invention and is not supported by the Banks document. Contrary to the Examiner's assertion, tab 266 is displayed to indicate that information in the work space 254 is associated with patient information icon 256 ("In addition, to clearly indicate that the information in workspace 254 is associated with the patient information icon 256, processor 106 encompasses patient information icon 256 in workspace 254 by providing a digital tab 266 which includes patient information icon 265 in workspace 254.") See col. 13, lines 13-19 of Banks. Banks never describes that Tab 266 indicates any outer border of the touch sensitive area, as asserted by the Advisory Action.

Since the theory presented in the Office Action based on tabs 266 or 276 is not supported by the Banks document and fails to meet the claim limitations even in view of the supplemental discussion in the Advisory Action, **the rejections are untenable and should be withdrawn.**

(3) New theory of rejection raised in the Advisory Action and not discussed in the Office Action

Incidentally, Applicants note that the Examiner raises a new alternative theory of rejection in the Advisory Action, which was not discussed in the previous Office Action.

The Advisory Action asserts:

It should also be noted that the individual graphical representations of the functions are themselves surrounded by a graphical circle, which encompasses a larger display area than the graphical representation of the function. Therefore, even if the Banks did not function in the above way, selection anywhere within the circled area is going to clearly activate the function.

This new line of arguments was not raised and never discussed in the previous Office Action. If the Examiner believes that this theory is more suitable for rejecting the claims, the Examiner is invited to reopen prosecution by issuing a new office action to discuss this new rejection.

For discussion purpose, this new line of arguments also is misplaced and not supported by the disclosure of Banks. The Banks document collectively refer to a “document” symbol and the alleged circle as a single “patient information icon 256,” which is displayed indicate an available selection that possibly can be selected by touching the screen. See col. 12, line 66-col. 13, line 6 of Banks. In other words, the “document” symbol and the circle, collectively, constitute a single icon 256 that visually defines an area for possible touch control, and are treated as a whole by as corresponding to the claimed “graphical representation of functionality.” As the Banks disclosure provides no description that how the size of a touch sensitive area corresponding to the patient information icon 256 should be provided and arranged relative to the icon 256, this new line of arguments also fails to support a prima facie case.

CONCLUSION

Applicants believe that this application is in condition for allowance, and request that the Examiner give the application favorable reconsideration and permit it to issue as a patent. If the Examiner believes that the application can be put in even better condition for allowance, the Examiner is invited to contact Applicants’ representatives listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this

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paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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